Council's order, the order made herein is not an order made by the High Court in a civil matter either in the exercise of its original or of its appellate jurisdiction. Section 29 of the Supreme Court of Judicature Act (Cap. 15) confers jurisdiction on the Court of Appeal to hear and determine an appeal only in such cases.

Moreover, the doubts we had in this matter as earlier expressed have not in any way been dispelled.

The provisions of Part VII of the Act clearly contemplate a special procedure in respect of disciplinary proceedings affecting the profession. One has only to consider the position that would arise should a person who had made a written complaint to the Society have been dissatisfied with the Council's action. Such a person could apply to a judge by way of originating summons under section 96 of the Act and the only orders a judge could make would be to affirm the Council's decision or to direct the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee. Surely it cannot be successfully contended that an appeal would lie in such circumstances to the Court of Appeal. As the Act provides, if a Disciplinary Committee makes a finding adverse to the advocate and solicitor the procedure prescribed under section 98 of the Act would apply and the matter would eventually go before a Court of three Judges and not before the Court of Appeal.

Moreover, the order made by a single judge under sections 95 and 96 is not an interlocutory order within the meaning of section 34 of the Supreme Court of Judicature Act.

We are accordingly of the opinion that the Court of Appeal has no jurisdiction to entertain an appeal of this nature from an order made by a judge under section 95 of the Act.

Appeal dismissed.

YAP ENG THONG & ANOR. v. FABER UNION LTD.

[O.C.J. (Winslow J.) March 8, 1973]

[Singapore — Suit No. 194 of 1971]

Contract — Agreement for sale of land — Agreement subject to signing of formal agreement of sale — Whether there was binding contract before signing of agreement of sale.

The plaintiffs signed an agreement for the purchase of a semi-detached bungalow to be constructed on a piece of land and paid $500 as option money. It was agreed that within six weeks of the agreement the plaintiffs should sign an agreement of sale with the owners, failing which the owners were to be at liberty to re-sell the property to another buyer and to forfeit the option money. No agreement of sale was signed and the owners therefore cancelled the sale. The plaintiffs claimed damages for breach of contract, insisting that there was already a legally binding contract.

Held: the agreement did not create a legally binding contract and therefore the action of the plaintiffs must be dismissed.

Cases referred to:-

(1) *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.* [1971] 1 M.L.J. 20.

(2) *Winn* v. *Bull* (1877) L.R. 7 Ch. D. 30.

(3) *Charles Rickards Ltd.* v. *Oppenhaim* [1950] 1 K.B. 616 at p. 623.

CIVIL SUIT.

M. N. Samy for the plaintiffs.

Chan Kian Hin for the defendants.

Winslow J.: On 21st July 1969, the plaintiffs signed an agreement at AB16 whereby they agreed to purchase a Semi-Detached Bungalow — Type 'C' to be constructed on Private Lot 70 in Faberhills on Government Resurvey Lots 164, 165 and 166 of Mukim V at the price of $57,500,

"whereof a sum of $500.00 being option money is now paid to the owners Faber Union Limited on the following conditions:—

1. That within 6 weeks from the date hereof we shall sign an agreement of sale with the owners and send the same together with the payment as therein mentioned to Messrs. Lee & Lee of ..., the owners' solicitors and shall thenceforth make payments of the balance of the purchase price by instalments in accordance with the schedule of payments contained herein and in the said agreement which I have seen.

2. That if we fail to comply with the requirements set out in clause 1 hereof the owners shall be at liberty to sell the above property to any other prospective buyer without notice to us in which case the option money of $500.00 so paid shall be forfeited to the owners.

3. ...

4. ...

5. That time shall be the essence of this agreement."

A copy of the agreement for sale of such houses in the usual form is at AB1-12 and, *inter alia*, contains a Schedule of Specifications relating to Type 'C' houses.

The plaintiffs at AB16, it will be observed, stated that they had seen such an agreement although, in his evidence, the first plaintiff denied having seen it. The second plaintiff did not give evidence. The first plaintiff is, in my opinion, bound by what he stated in his signed agreement of 21st July, 1969 notwithstanding his later denial. Although he alleged that the Office and Site Manager (Teo Teck Heng) gave him various assurances he was not called as a witness and there was no evidence that he was not available in Singapore.

Briefly, the plaintiffs did not sign such an agreement of sale nor did they send the same to Messrs Lee & Lee within 6 weeks from 21st July 1969.

Time was of the essence of this agreement of 21st July 1969. They accordingly failed to comply with an essential pre-requisite or condition set out in clause 1 aforesaid as a result of which the owners/defendants became entitled to sell the property, if so disposed, without notice to the plaintiffs, and to forfeit the option money. It should be noted that clause 4 of the agreement of 21st July 1969 relating to "time being of the essence of this agreement" applies to the option agreement and not to the agreement for sale referred to therein as counsel for the plaintiffs thought (see AB33 and AB38). That agreement for sale at AB3 refers separately to time being of the essence of that contract (see clause 4 thereof).

The owners exercised that power in April 1970, having "called off" the sale on 12th November, 1969

on the failure of the plaintiffs to sign the agreement for sale at any time before that.

These facts alone would have sufficed to defeat the plaintiffs' claim for damages for any breach of contract based on AB16, which they claimed was a legally binding contract, which I hold it was not. But they alleged waiver or variation of that "contract" by the failure of the defendants to send the agreement for sale to them within 6 weeks. It should, however, be noted that such failure was due to the plaintiffs' own delay through their solicitor in not confirming in time that the latter was acting for them (AB21).

Counsel for the plaintiffs, Mr. M. N. Samy, relied heavily on my own decision in *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.*[1] and asserted, on their behalf, that AB16 constituted a legally binding contract of which the defendants had been in breach. It becomes necessary therefore to examine my decision in that case to see whether the present case is on all fours with that one on its facts.

In the first place, in *Yeo Long Seng's* case, the plaintiff agreed to sign the agreement for sale within 14 days on receipt of the vendor's notice for signing the same failing which the vendor was entitled to cancel the booking and resell the property. In the case before me, however, the plaintiffs at AB16 agreed to a condition that they would sign the agreement of sale with the owners and send the same together with the payment as therein mentioned to the solicitors for the defendants within six weeks from 21st July 1969, nothing being said about the vendors' giving any notice within that period.

It is significant that there was indeed no dispute in *Yeo's* case as to what that agreement for sale should contain and I held that there was a valid contract even before the agreement for sale. The position in the suit before me, however, is that the parties had not, in fact, agreed that the agreement at AB1-12 contained all the terms of agreement.

From the evidence before me, the parties were not agreed as to all the terms set out in the agreement for sale in the sense that the plaintiffs claimed that certain items of furniture including two toilet cabinets with mirrors should have been included in the specifications therein. It is clear also that, notwithstanding the fact that the plaintiffs at AB16, had agreed to sign the agreement for sale which they stated they had seen, to wit, AB1-12, there was in fact a dispute as to what that agreement should contain. Applying the principle stated by Jessel M.R. in *Winn* v. *Bull*[2] that

"... If in the case of a proposed sale or lease of an estate two persons agree to all the terms and say, 'we will have the terms put into form' then all the terms being put into writing and agreed to, there is a contract".

it seems to me that there was no legally binding and enforceable contract evidenced by AB16 alone.

In the second place, in *Yeo's* case, the vendors returned the booking fee the very next day and tried to get out of their contractual obligations.

As events turned out, even though the defendants, after the expiration of the stipulated period of 6 weeks, sent the agreement in the form at AB1-12 to the plaintiffs for signature they refused to sign the same. It seems to me that the plaintiffs were never prepared to sign any agreement such as AB1-12 either within or without the stipulated period of 6 weeks unless such an agreement contained the disputed items.

It was only on 7th August 1969 (see AB19) that the solicitor for the plaintiffs wrote to the solicitors for the defendants, who had asked him for confirmation that he was in fact acting for the plaintiffs, that he was writing "to my client for his instructions". Strangely, the first plaintiff claimed in evidence that he instructed his solicitor, Mr. Samy, a week after 21st July 1969 that Messrs. Lee & Lee would be contacting him and, if this is true, it is difficult to understand why Mr. Samy on 7th August 1969 should write to Messrs. Lee & Lee like this. Not hearing anything from him till 15th September, 1969, a date well outside the stipulated period of 6 weeks, the solicitors for the defendants wrote to the solicitor for the plaintiffs reminding him of the time stipulation in the option and giving 3 days to the plaintiffs to confirm their intention to proceed with the purchase. On 16th September, Mr. Samy confirmed that he was acting for the plaintiffs in the matter and asked for "the title deeds and draft of the agreement for my perusal and attention" (see AB21). The solicitors for the defendants immediately replied on 17th September 1969 at AB22 forwarding the agreement for sale in duplicate for execution by the plaintiffs.

Thereafter the plaintiffs, far from signing the agreement, still persisted in demanding the inclusion of the disputed items (see AB23) thereby clearly indicating that no legally binding contract had yet come into existence.

Even as late as 21st October 1969, at AB27, the defendants' solicitors returned the agreement for the plaintiffs' signatures. Despite all the latitude that had already been given to the plaintiffs by the defendants, the only response was a reply from the plaintiffs' solicitor to the effect that his clients "are now in England on business and will not be back in Singapore for six weeks certain and I will revert to you on their return to Singapore". From the first plaintiff's evidence, this was not entirely correct because his wife, the 2nd plaintiff, had not left for England and was in Singapore.

On 12th November, 1969, their patience having been exhausted, the defendants called the sale off which in my opinion they had all along been entitled to do after the expiration of 6 weeks from 21st July 1969. Any forbearance or waiver in respect of the stipulation in clause 4 of AB16, which may be said to have been implicit in the defendants' conduct, did not, in my judgment, amount to the grant of an indefinite extension of time so as to justify the dilatory attitude of the plaintiffs in this matter all along. They refused to sign the agreement within a reasonable time of its being sent to them and insisted on items being included therein which were not proved before me to have been agreed by both parties. One would have expected *bona fide* purchasers to have shown greater vigilance in the matter and executed the agreement, which they had previously seen, within the stipulated

period or at least as soon as possible after receiving the same instead of haggling over the inclusion of a few items of furniture at a time when it was important for them to conclude the sale at the earliest moment especially if, as the first plaintiff said, land values were rising rapidly.

As I have said, AB16 does not create a binding contract as between the parties. A contract would not, on the facts, have come into being until AB1-12 (the agreement for sale) had been executed. I have nevertheless dealt with matters such as waiver raised by counsel for the plaintiffs because it seems to me that he has completely misunderstood AB16, especially Clause 4, as to time being of the essence of the agreement which he thought was not the agreement of 21st July 1969 but the agreement for sale which had yet to be executed.

I agree with the submission by counsel for the defendants that, pending the execution of the agreement for sale at AB1-12, the parties were still in the stage of negotiations and that no binding contract had yet been concluded between them. I do not accept the proposition that by their conduct, the defendants evinced an intention to affect any legal relations by the concessions they made, whilst pressing for execution of AB1-12, during such negotiations for the simple reason that there was no contract between them. (See *Charles Rickards Ltd.* v. *Oppenhaim*[3] at 623 *et seq. per* Denning L.J.).

Having decided that AB16 does not create a legally binding contract, I have no alternative but to dismiss the claim by the plaintiffs.

Judgment will be entered for the defendants with costs.

Judgment for the defendants.

Solicitors: *M. N. Samy; Lee & Lee.*

HENG YIK FANG v. PUBLIC PROSECUTOR

[A.CrJ. (Wee Chong Jin C.J.) March 14, 1973]

[Singapore — Magistrate's Appeal No. 70 of 1972]

Copyright — Unauthorised reproductions of gramophone records in the form of cassettes and cartridge tapes — Whether "pirated copies" — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 and 3.

In this case the appellant had been convicted on a charge of possessing for sale pirated copies of certain gramophone records which were protected by copyright. It was alleged that the appellant had in her possession for sale unauthorised cartridge and cassette tape reproductions of the gramophone records. It was argued on appeal that the cartridges and cassette tapes did not come within the definition of "pirated copies".

Held: (1) the cartridges and cassette tapes found in the possession of the appellant came within the definition of "pirated copies" in the Copyright (Gramophone Records and Government Broadcasting) Act;

(2) as the learned magistrate had found that the cartridges and cassette tapes were pirated copies of the copyrights and the appellant had not shown on the balance of probabilities that she had no reason to suppose that she was dealing with pirated copies and that in all respects she had acted innocently, there was no reason to interfere with the findings of the learned magistrate. Therefore the appeal should be dismissed.

MAGISTRATE'S CRIMINAL APPEAL.

L. S. Fernando for the appellant.

Lawrence Ang (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: The appellant is appealing against her conviction on a charge of possessing for sale pirated copies of certain gramophone records which are protected by copyright. The charge reads as follows: —

"You, Heng Yik Fang,
are charged that you, on or about the 3rd day of August, 1971, at about 1.45 p.m. at 'Golden Sound Record Company', No. 418, North Bridge Road, Singapore, did have in your possession for sale pirated copies of certain gramophone records, to wit: —

(a) 4 cartridges & 32 cassette tapes containing E.M.I. recordings and

(b) 9 cassette tapes containing Decca recordings

and you have thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act Chapter 188, 1970 Edition".

The facts are briefly these. E.M.I. are the owners of the subsisting copyright in five gramophone records and Decca are the owners of the subsisting copyright in two gramophone records from which reproductions were made without their consents into the form of cassettes and cartridge tapes. The firm of Golden Sound Record Company, of which the appellant is the sole proprietress, were offering for sale at No. 418 North Bridge Road, the cassette tapes and cartridges which are the subject matter of the charge. The magistrate found that these cassette tapes and cartridges were reproductions made without the consent of E.M.I. and Decca from the gramophone records of which E.M.I. and Decca have subsisting copyright.

It is contended on the appellant's behalf that she has committed no offence under section 3(1) of the Copyright (Gramophone and Government Broadcasting) Act (hereinafter referred to as "the Act") because a reproduction into the form of a cassette tape or cartridge of the contents of a gramophone record is not a pirated copy of such gramophone record within the definition of "pirated copies" in section 2 of the Act. Section 2 reads thus: —

"2. In this Act, unless the context otherwise requires —
'gramophone record' means the material first embodying the recording of a sequence of sounds capable, by the use of that material, of being automatically reproduced aurally, but does not include a sound track associated with a cinematograph film;

'pirated copies', in relation to any gramophone record, means any copies of such record made or reproduced without the consent lawfully given by the owner of the copyright in such record".

The argument advanced in support of the contention is that the definition of "pirated copies" in the Act, giving the words used their natural meaning, does not even by implication, bring cartridges or cassette tapes within its ambit. As I understand counsel's argument, he is saying that a reproduction of the